



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

FEB 16 2017

Bonnie Secakuku, CSA  
Sipaulovi Village  
P.O. Box 889  
Second Mesa, AZ 86043

Re: Finding of Violation (FOV) for Sipaulovi Village Public Water System  
Public Water System Identification Number: 090400107

Dear Ms. Secakuku:

The United States Environmental Protection Agency, Region 9 ("EPA") is issuing this finding of violation ("FOV") to Sipaulovi Village for violations of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, *et seq.* Our review of the relevant records indicate that you have violated the SDWA and its National Primary Drinking Water Regulations ("NPDWRs") at 40 C.F.R. Part 141 by failing to monitor for arsenic, failing to comply with the maximum contaminant level ("MCL") for arsenic, and failing to provide public notice at the Sipaulovi Village (the "Village") public water system ("System"). Further information related to these violations is provided below.

Arsenic MCL Violations

The NPDWRs at 40 C.F.R. § 141.2 define an MCL as the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Pursuant to 40 C.F.R. § 141.62(b), the MCL for arsenic is 0.010 mg/L. Pursuant to 40 C.F.R. § 141.23(i)(1), compliance with the MCL for arsenic is determined based on a running annual average ("RAA") at any sampling point. A system with a RAA above the MCL has violated the MCL standard. EPA calculated the RAA for arsenic for this System based on data submitted to EPA by Sipaulovi Village. For the compliance period beginning June 6, 2012 through October 27, 2016, EPA calculated an arsenic RAA from 0.0226 mg/L to 0.0174 mg/L. These results show the System is out of compliance with the MCL for arsenic.

Failure to Monitor Violations

The NPDWRs at 40 C.F.R. § 141.23(c)(7) require public water systems to monitor quarterly following violations of the arsenic MCL. Data submitted to EPA by Sipaulovi Village indicates that the System was in violation of the MCL for arsenic beginning at least in June 2012. The System failed to monitor for arsenic in the first and second quarters of 2016. The System also failed to monitor for arsenic in the last quarter of 2014. These failures to monitor for arsenic are violations of the NPDWRs.

### Failure to Provide Public Notice Violations

The NPDWRs at 40 C.F.R. Part 141, Subpart Q, require each owner or operator of a public water system to provide public notice of any failure to comply with an NPDWR, including violations of an MCL or a monitoring requirement. Public notice requirements vary depending on whether the underlying violation is classified as a Tier 1, 2, or 3 violation, as defined in 40 C.F.R. Part 141, Subpart Q, Appendix A.

As applicable here, 40 C.F.R. § 141.203 requires the public water system to provide Tier 2 public notice no later than 30 days after the System learns of an arsenic MCL violation. Pursuant to 40 C.F.R. § 141.203(c), where a Tier 2 public notice is required, a system must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served by the system within the required time period. A system must repeat the notice every three months as long as the violation or situation persists. The System was required to submit documentation to EPA indicating that it provided the required public notice for arsenic MCL violations, yet it has failed to do so.

### Next Steps

Under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA is authorized to issue an administrative order requiring the public water system to comply with the SDWA's NPDWRs and applicable requirements. Any person who violates, or fails or refuses to comply with such an order may be liable to the United States for up to \$53,907 per day of violation.

Because of the ongoing nature of the violations, EPA's primary objective is an enforceable schedule for the Sipaulovi Village to expeditiously return to compliance with the SDWA requirements. The Agency would prefer to enter into an administrative order on consent ("AOC") with the Sipaulovi Village to resolve the aforementioned violations, rather than issue a unilateral compliance order as described in the previous paragraph. Therefore, we invite the Village to enter into discussions with EPA on a mutually acceptable AOC that contains a schedule for correcting the violations noted above. If the Village is interested in such discussions, you or your representatives should contact Mr. Patrick Chan of the Enforcement Division at (415) 972-3551 or have your attorney contact Ms. Janet Magnuson of the Office of Regional Counsel at (415) 972-3887 by **March 16, 2017**.

EPA expects that the terms of any AOC agreed upon by the parties would include, at a minimum, the following:

- A letter of intent from the Village that commits to complying with the AOC;
- A compliance plan that describes in detail the steps and schedule the Village will follow to return its System to compliance with the arsenic MCL, the arsenic monitoring requirements and any applicable public notice requirements;
- Implementation of Interim Priority Actions; and
- Quarterly reports and quarterly meetings to update EPA on the status of work.

In the meantime, you are obligated to continuously comply with the arsenic MCL at all times. You should also continue to monitor and report consistent with the requirements of the SDWA, including sampling for arsenic on a quarterly basis per 40 C.F.R. § 141.23(c)(7), sending all samples taken to a

State certified laboratory for analysis, and reporting all monitoring results to U.S. EPA within 10 days of receipt of the results per 40 C.F.R. § 141.31(a). Finally, you should continue to provide public notice every three months for arsenic as required by 40 C.F.R. §§ 141.203(b) and 141.205, and submit a copy of the public notice and a certification statement to EPA that all public notice requirements have been met within 10 days of completing the public notification as required by 40 C.F.R. § 141.31(d) and 141.201(c)(3), to:

Patrick Chan  
SDWA/FIFRA Enforcement Section  
U.S. Environmental Protection Agency  
75 Hawthorne Street (ENF-3-3)  
Phone: 415-972-3551  
Fax: 415-947-3519  
E-mail: [chan.patrick@epa.gov](mailto:chan.patrick@epa.gov)

In addition, please ensure that any data or results continue to be submitted to the EPA Drinking Water Program through the Data Manager at [DataManager@epa.gov](mailto:DataManager@epa.gov).

Enclosed with this letter is an information sheet entitled *U.S. EPA Small Business Resources* that may be helpful if you are a qualified small business.

Please contact Patrick Chan, Enforcement Officer, at (415) 972-3551 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson". The signature is fluid and cursive, with the first name "Kathleen" being more prominent.

Kathleen H. Johnson  
Director, Enforcement Division

Enclosures:

1. EPA Small Business Resources Information Sheet



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

**Automotive Service and Repair**  
[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

**Chemical Manufacturing**  
[www.chemalliance.org](http://www.chemalliance.org)

**Construction**  
[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

**Education**  
[www.campuserc.org](http://www.campuserc.org)

**Food Processing**  
[www.fpeac.org](http://www.fpeac.org)

**Healthcare**  
[www.hercenter.org](http://www.hercenter.org)

**Local Government**  
[www.lgean.org](http://www.lgean.org)

**Metal Finishing**  
[www.nmfrc.org](http://www.nmfrc.org)

**Paints and Coatings**  
[www.paintcenter.org](http://www.paintcenter.org)

**Printing**  
[www.pneac.org](http://www.pneac.org)

**Ports**  
[www.portcompliance.org](http://www.portcompliance.org)

**Transportation**  
[www.tercenter.org](http://www.tercenter.org)

**U.S. Border Compliance and Import/Export Issues**  
[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)  
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

**Clean Air Technology Center (CATC) Info-line**  
[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

**Superfund, TRI, EPCRA, RMP and Oil Information Center**  
[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

**EPA Imported Vehicles and Engines Public Helpline**  
[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

**National Pesticide Information Center**  
[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

**National Response Center Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

**Pollution Prevention Information Clearinghouse (PPIC)** - [www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

**Safe Drinking Water Hotline** - [www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791



### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*